



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/335,714 06/18/99 LACEY D 4007-8007

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QM12/0320

EXAMINER

YU, J

ART UNIT

PAPER NUMBER

3764

DATE MAILED:

03/20/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/335,714

Applicant(s)

Lacey

Examiner

Justine Yu

Group Art Unit

3764



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-11 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-11 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Oath/Declaration*

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration believes the named inventor or inventors to be the **original and first inventor** or inventors of the subject matter which is claimed and for which a patent is sought.

### *Specification*

2. The disclosure is objected to because of the following informalities: it does not contain the Brief description of the drawing.

Appropriate correction is required.

3. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

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- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- © Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
  - 1. Field of the Invention.
  - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (I) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing (see 37 CFR 1.821-1.825).

***Drawings***

4. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

***Claim Rejections - 35 USC § 112***

5. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3-4 the term "the juxtaposition" lacks antecedent basis. In lines 4-5, the term "smaller than the head" is vague and indefinite because the size of the head varied upon various people.

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In claims 4 and 5, the term "like" is vague and indefinite.

Claim 5 is confusing as whether or not the same ball like structure as recited in claim 4 is referred.

In claim 10, the term "opposite ends of the fingers" lacks antecedent basis.

In claim 11, the term "or otherwise" is vague and indefinite.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin (Pat. No. 5,728,050).

Lin teaches a massage/slap device comprising a plurality of flexible bars 1 (resilient and pliable fingers) (column 2, lines 4-5) which defining a space having an opening at one end formed by the juxtaposition of respective free ends of the fingers (figure 3). Figure 3 of Lin further shows that the opposite ends of the fingers being connected together and forming a handle. It is inherent that Lin's device would be able to perform the same massage function as set forth in the claim since Lin's device has the same structure as claimed.

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8. Claims 1-4, 6, 10, and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rowe (Pat. No. 836,217).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin.

In regard to claim 3, Lin lacks a detail description that the free end of each finger being smoothly terminated. However, the feature of having smoothly terminated free end of each finger is considered as an obvious design choice within the knowledge of one skill in the art, as is necessary for preventing damage to the human body.

In regard to claims 6-8, Lin in column 2, lines 4-5 teaches that the fingers being made of flexible metal (electrically conductive) and further shows in figure 3 that the fingers being configured as wires. The feature of choosing a particular metal such as copper is considered as an obvious design choice since copper is a well known material in the art.

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In regard to claim 9, the feature of choosing a particular number of fingers, such as between four and twenty four fingers is considered as an obvious design choice since it appears that Lin's device would perform equally well with 4 to 24 fingers.

11. Claims 5, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowe.

Rowe teaches an elastic covering 15 being placed over each of the free end of the fingers. Rowe does not explicitly disclose that the ball like structure being made of resin. However, the feature of choosing a particular material such as a resin for the ball like structure is considered as an obvious design choice within the knowledge of one skilled in the art, since it is well known in the art that resin is one of the elastic materials.

In regard to claims 7 and 8, the feature of choosing a particular material, such as metal or copper, for the fingers is considered as an obvious design choice since the metal or copper is a well known material in the art.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chen (Pat. No. Des. 385,632), Haldi (Pat. No. Des. 382,971), Kingery et al (Pat. No. 2,856,918), Davenport (Pat. No. 2,813,275), Kusnets et al (Pat. No. Des. 384,157), Kawada (Pat. No. 4,162,675), Griffiths (GB 251,075), Meyer (DE 334,840), Beran (AT 41,606),

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Beckmann (FR 740,456), Daubner (DE 360,209), and Durant (FR 1,093,795) are cited to show different massagers.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine Yu whose telephone number is (703) 308-2675. The examiner can normally be reached on Tuesday - Friday from 8:30 AM - 6:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Apley, can be reached on (703) 308-0305. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Justine Yu

March 13, 2000